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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

E.S., through her guardians Mary and)
Steven Stassel, B.M., through his)
guardians Wayne and Sharon Mattingly,)
and K.H., through his guardian, Robert)
Howard, for themselves and others)
similarly situated,)

Plaintiffs,)

v.)

STATE OF ALASKA, DEPARTMENT)
OF HEALTH AND SOCIAL SERVICES,)
DIVISION OF SENIOR AND)
DISABILITIES SERVICES and DUANE)
MAYES, in his official capacity as)
Division Director,)

Defendants.)

Case No. 1:18-CV-00008-HRH

SETTLEMENT AGREEMENT

The parties, E.S., B.M., and K.H., the Division of Senior and Disabilities Services (SDS) and Duane Mayes, agree to the following terms to resolve the litigation in this matter:

1. Within 30 business days of the date below, SDS will send notices to all individuals who (a) requested more than 12 hours of Medicaid Waiver day habilitation services and (b) had day

habilitation services denied (c) in a notice sent since October 1, 2017 (d) citing the new regulation at 7 AAC 130.260(c). The notices will explain that there was a procedural error in the implementation of the new regulations and that the recipient has the right to restore their waiver services to the levels in the prior plan of care if the recipient makes this request within 30 days. These notices will go to everyone mentioned above, whether or not the Division's day habilitation notices went to them before or after March 20, 2018. SDS will streamline those requests by issuing new service authorizations within 15 business days after receipt.

2. The notice will also explain that rather than return to their prior levels, the recipient may request an amendment to their current plan of care if they believe that they need additional day habilitation hours. The notice will explain that the amendment request will be reviewed to consider whether the additional day habilitation is necessary to protect their health and safety *or* to prevent institutionalization.
3. Anyone currently in a fair hearing or mediation before the Alaska Office of Administrative Hearings will also receive this notice, and have the right to restore their waiver services to the levels in the prior plan of care. The parties may, through the administrative hearing process, negotiate a different combination of day habilitation hours over 12 hours per week and other waiver services, without having to complete a formal plan of care amendment. If the parties reach an agreement, the recipient's care coordinator will submit a signed HCBS Services Overview and Cost Sheet (Uni-14).
4. SDS will develop more detailed standards defining "health and safety" and "risk of institutionalization" as these terms relate to the waiver day habilitation service and will put these out for public comment as soon as possible. SDS will welcome and consider any comments from stakeholders and care coordinators. The comment period will include simultaneous amendment to the regulation and a new waiver amendment to CMS.
5. For any new waiver plans of care processed by SDS moving forward, SDS will review requests to receive day habilitation that exceeds an average of 12 hours per week to determine whether the additional hours are needed to protect the recipient's health and safety *or* to prevent institutionalization until the notice process for revised regulations and an amendment to the State waiver plan can be completed. SDS will notify care coordinators and waiver recipients of this change within 30 business days, through an e-alert and Director Mayes will communicate it to relevant HCBS beneficiary boards and provider and advocacy organizations.
6. SDS will develop additional training and outreach to work with care coordinators to better assist their clients in articulating why they need day habilitation over 12 hours per week if that is their request.
7. The above-captioned case will be dismissed, with each party bearing their own fees and costs.

DATED: July 6, 2018.

Respectfully submitted,

By: /s/ Mark Regan
Mark Regan
Joanna Cahoon
Disability Law Center of Alaska
Attorneys for Plaintiffs

By: /s/Elizabeth Smith
Elizabeth Smith
Alexander Hildebrand
Attorney General's Office
State of Alaska Department of Law

SO ORDERED:

The Hon. H. Russel Holland
Senior United States District Judge